PENGARAH JABATAN PENGANGKUTAN NEGERI SELANGOR & ORS v. SIN YOONG MING

FEDERAL COURT, PUTRAJAYA
RAUS SHARIF PCA
ABDULL HAMID EMBONG FCJ
HASAN LAH FCJ
ZALEHA ZAHARI FCJ
RAMLY ALI FCJ
[CIVIL APPEAL NO: 01(F)-12-06-2013(B)]
20 NOVEMBER 2014

ROAD TRANSPORT: *Transfer of vehicles – Registration of transfer – Stolen vehicle transferred to plaintiff – Whether Road Transport Department (RTD) has duty to ensure that particulars in registration certificate of motor vehicles were accurate – Whether RTD has duty to inspect engine and chassis number of vehicle being transferred to new owner – Road Transport Act 1987, ss. 8, 10, 12, 13 & 59*

The respondent/plaintiff bought a used car. He was given a transfer form executed by the registered owner and the original motor vehicle registration form issued by the Road Transport Department ('RTD'). The respondent had checked with RTD's records and found the particulars relating to the motor car to be correct and there were no impediments of the transfer of the motor car to him. The respondent thus proceeded with the purchase and completed the transfer of ownership. No inspection was done on the motor car by RTD before the registration of the transfer of the ownership to the respondent. That was the practice and procedure adopted by RTD in 1999. RTD would only rely on the documents submitted for the registration. The car was subsequently seized by the police and was found to be a stolen car. The respondent thus commenced the present suit against the appellants/defendants claiming for his losses. The High Court held that the first appellant had a duty to ensure that the particulars in the registration certificate of the motor car were accurate, reliable, well-kept, valid and protected. It was further held that the first appellant had failed to perform his statutory duty imposed by ss. 10 and 12 of the Road Transport Act 1987 ('Act') before registering the respondent as the new owner of the car by not inspecting the engine and chassis numbers of the motor car and ignoring and not recording the information given by Tenaga Insurance Bhd that the motor car was stolen. The Court of Appeal affirmed the decision of the High Court but on different grounds. The Court of Appeal held that s. 13 of the Act deals with change of possession or ownership of vehicles and this provision does not require the vehicle to be inspected. The Court of Appeal further held that ss. 10 and 12 of the Act do not apply to transfer of ownership of vehicles. The Court of Appeal however went on to hold that by virtue of s. 59 of the Act there was a duty imposed on the first appellant to inspect vehicles even after their registration. The Court of Appeal concluded that the first appellant had failed in his duty of care in carrying out his functions under the Act. The

appellants were granted leave to appeal to the Federal Court on, *inter alia*, the following question of law: whether the case of *Ketua Polis Negeri Sembilan & Anor v. Manoharan a/l Dorasamy* applies to vehicles whose registration are transferred pursuant to s. 13 of the Act.

Held (dismissing the appeal with costs)
Per Hasan Lah FCJ delivering the judgment of the court:

(1) Sections 10 and 12 of the Act are only applicable to the registration of a motor vehicle and not to the change of possession (the registration of a new owner of motor vehicle like the instant). Only s. 13 of the Act applies to change of possession of a motor vehicle. (para 28)

(2) Unlike s. 12 of the Act there is no requirement under s. 13 of the Act for the Director to inspect the motor vehicle before the registration of a new owner of the motor vehicle. As such, the first appellant did not breach his duty under s. 13 when he registered the respondent as the new registered owner of the motor car without first inspecting the motor car. Hence, the answer to the question posed was in the negative. (paras 29 & 30)

(3) The first appellant was informed by Tenaga Insurance Bhd that in December 1996 the motor car was stolen. Unfortunately, the first appellant did not record that information in the register kept by RTD. The explanation given was that it was not the practice of RTD to record that information in its register. The motor car was registered in the respondent's name on 1 April 1999, which was 3 1/2 years after the first appellant was informed that the motor car was stolen. (para 34)

(4) The registers maintained by RTD pursuant to s. 8 of the Act must contain accurate particulars of all vehicles registered by RTD. This is because the prospective purchasers of the vehicles and those involved in the motor trade rely on such information to conduct private and commercial transactions. If the registers are not reliable they will affect those in the motor trade industry and the public who purchase second-hand vehicles; (*Pendaftar Dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v. KS South Motor Sdn Bhd*, foll). (para 36)

Bahasa Malaysia *Translation Of Headnotes*

Responden/plaintif membeli sebuah kereta terpakai. Dia diberikan suatu borang pindah milik yang ditandatangani oleh pemilik berdaftar dan borang pendaftaran kenderaan bermotor asal dikeluarkan oleh Jabatan Pengangkutan Jalan ('JPJ'). Responden telah membuat pemeriksaan dengan rekod JPJ dan mendapati bahawa butir-butir berkaitan dengan kereta tersebut adalah betul dan tidak ada halangan untuk memindah milik kereta tersebut kepadanya. Responden oleh itu meneruskan dengan pembelian dan menyempurnakan pindah milik. Tidak ada pemeriksaan yang dilakukan terhadap kereta tersebut oleh JPJ sebelum pendaftaran pindah milik kepada responden. Itu

A adalah amalan dan prosedur yang dilaksanakan oleh JPJ dalam tahun 1999. Kereta tersebut kemudiannya dirampas oleh pihak polis dan didapati adalah kereta curi. Responden, oleh itu, memulakan guaman ini terhadap perayu-perayu/defendan-defendan menuntut kerugiannya. Mahkamah Tinggi memutuskan bahawa perayu pertama mempunyai kewajipan untuk
B memastikan bahawa butir-butir dalam sijil pendaftaran kereta adalah tepat, boleh dipercayai, disimpan dengan baik, sah dan dilindungi. Mahkamah juga mendapati bahawa perayu pertama gagal melaksanakan kewajipan statutori yang dikenakan oleh ss. 10 dan 12 Akta Pengangkutan Jalan 1987 ('Akta') sebelum mendaftarkan responden sebagai pemilik baru kereta tersebut
C dengan tidak memeriksa nombor enjin dan nombor casis kereta dan tidak mengendahkan dan tidak merekodkan maklumat yang diberikan oleh Tenaga Insurance Bhd bahawa kereta tersebut adalah dicuri. Mahkamah Rayuan mengesahkan keputusan Mahkamah Tinggi tetapi atas alasan-alasan lain. Mahkamah Rayuan memutuskan bahawa s. 13 berkait dengan penukaran milikan kenderaan dan peruntukan ini tidak memerlukan kenderaan tersebut
D diperiksa. Mahkamah Rayuan memutuskan lagi bahawa ss. 10 dan 12 tidak terpakai untuk pindah milik kenderaan. Mahkamah Rayuan walau bagaimanapun memutuskan selanjutnya bahawa berikutan s. 59 Akta terdapat kewajipan yang diperuntukkan ke atas perayu pertama untuk memeriksa kenderaan-kenderaan walaupun selepas pendaftarannya.
E Mahkamah Rayuan memutuskan bahawa perayu pertama telah gagal dalam kewajipan berhati-hatinya dalam menjalankan fungsinya di bawah Akta. Perayu-perayu diberikan kebenaran untuk merayu ke Mahkamah Persekutuan dan telah merayu antara lain, atas persoalan undang-undang berikut: sama ada kes *Ketua Polis Negeri Sembilan & Anor v. Manoharan a/l*
F *Dorasamy* terpakai bagi kenderaan-kenderaan yang pendaftarannya telah dipindah milik menurut s. 13 Akta.

Diputuskan (menolak rayuan dengan kos)
Oleh Hasan Lah HMP menyampaikan penghakiman mahkamah:

G **(1)** Seksyen-seksyen 10 dan 12 Akta hanya terpakai kepada pendaftaran kenderaan bermotor dan bukan untuk pindah milikan (pendaftaran pemilik baru kenderaan bermotor seperti kes ini). Hanya s. 13 Akta terpakai kepada pemindahan milikan kenderaan bermotor.

(2) Tidak seperti s. 12 Akta, tidak ada keperluan di bawah s. 13 Akta untuk
H Pengarah memeriksa kenderaan sebelum pendaftaran pemilik baru kenderaan. Oleh itu, perayu pertama tidak melanggar kewajipannya di bawah s. 13 apabila dia mendaftarkan responden sebagai pemilik berdaftar yang baru kereta tersebut tanpa membuat pemeriksaan terdahulu kereta tersebut. Oleh itu, jawapan kepada soalan yang
I dikemukakan dijawab secara negatif.

(3) Perayu pertama diberitahu oleh Tenaga Insurance Bhd bahawa dalam bulan Disember 1996 kereta tersebut telah dicuri. Malangnya, perayu pertama tidak merekodkan maklumat itu dalam daftar yang disimpan oleh JPJ. Penjelasan yang diberikan adalah bahawa ia bukan amalan JPJ untuk merekodkan maklumat tersebut dalam daftarnya. Kereta tersebut telah didaftarkan atas nama responden pada 1 April 1999, yang adalah 3 1/2 tahun selepas perayu pertama diberitahu bahawa kereta tersebut adalah dicuri.

(4) Daftar yang disimpan oleh JPJ menurut s. 8 perlu mengandungi butir-butir yang tepat bagi kesemua kenderaan-kenderan yang didaftarkan oleh JPJ. Ini adalah kerana pembeli prospektif kenderaan-kenderaan dan yang terlibat dengan perniagaan motor bergantung kepada maklumat sedemikian untuk menjalankan transaksi-transaksi persendirian dan komersial. Jika daftar-daftar tersebut tidak boleh dipercayai ia akan menjejaskan mereka yang terlibat dalam industri perniagaan motor dan umum yang membeli kenderaan-kenderaan terpakai; (*Pendaftar Dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v. KS South Motor Sdn Bhd*, diikuti).

Case(s) referred to:

Datuk M Kayveas v. See Hong Chen & Sons Sdn Bhd & Ors [2013] 5 CLJ 949 FC ***(refd)***

E v. K [1995] 2 NZLR 239 ***(refd)***

Groves v. Wimborne [1989] 2 QB 402 ***(refd)***

Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors [2009] 1 CLJ 663 FC ***(refd)***

Ketua Polis Negeri Sembilan & Anor v. Manoharan Dorasamy [2004] 1 CLJ 101 FC ***(not foll)***

Pacific Forest Industries Sdn Bhd & Anor v. Lin Wen-Chih & Anor [2009] 6 CLJ 430 FC ***(refd)***

Pendaftar Dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v. KS South Motor Sdn Bhd [2000] 2 CLJ 573 CA ***(foll)***

Legislation referred to:

Road Transport Act 1987, ss. 8, 10, 12, 13(1), 59

For the apppellants - Azizan Md Arshad SFC (Mariam Hasanah Othman SFC & Shaiful Nizam Shahrin FC with him)

For the respondent - Mohd Firuz Jaffril (Abdullah Abd Rahman with him); M/s Firuz, Aidil & Zarina

[Appeal from Court of Appeal; Civil Appeal No: B-01-815-2010]

Reported by Amutha Suppayah

JUDGMENT

Hasan Lah FCJ:

[1] Leave was granted on 21 May 2013 to the appellants to appeal against the decision of the Court of Appeal given on 30 July 2012 on the following questions of law (in Malay):

(1) sama ada kes *Ketua Polis Negeri Sembilan & Anor v. Manoharan a/l Dorasamy* [2004] 3 MLJ 565 terpakai kepada kenderaan yang ditukar hakmilik menurut s. 13 Akta Pengangkutan Jalan 1987; dan

(Whether the case of *Ketua Polis Negeri Sembilan & Anor v. Manoharan a/l Dorasamy* [2004] 3 MLJ 565 applies to vehicles whose registration are transferred pursuant to s. 13 of the Road Transport Act 1987);

(2) jika jawapan kepada soalan pertama di atas adalah dalam bentuk positif, sama ada gantirugi diperuntukkan di bawah Akta Pengangkutan Jalan 1987 untuk keingkaran kewajipan statutori di bawah s. 13 Akta Pengangkutan Jalan 1987 tersebut.

(If the answer to question (1) is in the affirmative, whether damages can be claimed for breach of statutory duty under s. 13 of the Road Transport Act 1987).

[2] On 15 April 2014 this court granted leave to the appellants to pose the following additional questions of law:

(3) sama ada Mahkamah Rayuan boleh memutuskan di atas peruntukan undang-undang bertulis yang tidak diplidkan di dalam mana-mana kertas kausa atau disokong di dalam hujahan pihak-pihak semasa di peringkat Mahkamah Tinggi dan peringkat Mahkamah Rayuan sendiri; dan

(Whether it is open to the Court of Appeal to decide the appeal on a provision of written law which was not pleaded in any cause papers or canvassed in the submissions of the parties in the High Court and the Court of Appeal itself);

(4) sama ada selepas pendaftaran kenderaan bermotor dilakukan, tugas statutori dikenakan terhadap Pengarah Jabatan Pengangkutan Jalan berdasarkan kepada Seksyen 59 atau mana-mana peruntukan di dalam Akta Pengangkutan Jalan 1987 untuk menjalankan pemeriksaan fizikal terhadap kenderaan bermotor tersebut untuk mengelakkan sebarang kerugian di alami oleh seseorang yang telah membeli kenderaan tersebut.

(Whether after the registration of a motor vehicle has been done, a statutory duty is imposed on the Director of Road Transport Department pursuant to Section 59 or any other provision of the Road Transport Act 1987 to carry out a physical inspection of the said motor vehicle so as to avert any losses incurred by a person who has purchased the said vehicle).

[3] The appellants were the defendants in the High Court and the respondent was the plaintiff. In the High Court, Tenaga Insurance Bhd, an insurance company, which provided insurance coverage for the motor car from 8 August 1996 to 7 August 1997 was also joined as the 4th defendant.

[4] The facts of the case are these. Sometime in March 1999, the respondent intended to buy a used Mercedes Benz motor car bearing registration number NAN 1888. He was given a transfer form executed by

the registered owner, Riwanis Modal Sdn Bhd, and the original motor vehicle registration form issued by the Road Transport Department ('Department'). The respondent had checked with the Department's records and found the particulars relating to the motor car to be correct and there were no impediments of the transfer of the motor car to him.

[5] The respondent proceeded with the purchase and applied to the first appellant for a Selangor number plate. This was approved and the number given was BFN 1888.

[6] The transfer of ownership of the motor car to the respondent was completed on 1 April 1999. From the evidence given by the appellants' witnesses it was clear that no inspection was done on the motor car by the Department before the registration of the transfer of the ownership of the motor car to the respondent. That was the practice and procedure adopted by the Department in 1999. The Department would only rely on the documents submitted for the registration.

[7] On 27 April 1999 the motor car was seized by the police on suspicion that the motor car was a stolen motor car. Investigations by way of a chemical process carried out by the Chemistry Department revealed that the engine and chassis numbers of the motor car were tampered with and the chassis had been rejoined and welded.

[8] On 9 May 2000 the respondent filed a suit against the three appellants and Tenaga Insurance Berhad for damages. The respondent's pleaded case was that the respondent suffered the losses as a result of the first appellant's negligence in:

(a) failing to keep and maintain an accurate, reliable and well – kept registration system of the motor vehicles;

(b) failing to update its registration and information system with the latest information;

(c) failing to maintain an efficient system of registration of motor vehicles; and

(d) failing to provide accurate information relating to the registration of the motor vehicles.

[9] In his defence, the first appellant *inter alia* denied that he was negligent and averred that the registration and the change of ownership of the motor car was done lawfully and in accordance with the procedure and the provisions of the Road Transport Act 1987 ('Act'). Alternatively, it was averred that the relevant documents were falsified by an unknown person or persons.

A **Findings Of The High Court**

[10] After a full trial, the High Court *inter alia* made the following findings on liability:

(a) the first appellant had a duty to ensure that the particulars in the
B registration certificate of the motor car were accurate, reliable, well-kept, valid and protected;

(b) the second and third appellants were vicariously liable; and

(c) the first appellant failed to perform his statutory duty imposed by ss. 10 and 12 of the Act before registering the respondent as the new owner of
C the motor car by not inspecting the engine and chassis numbers of the motor car, ignoring and did not record the information given by Tenaga Insurance Berhad that the motor car was stolen in the Department's information system.

D **[11]** It is to be noted that in finding that the first appellant had breached his statutory duty, the High Court relied on the decision of this court in *Ketua Polis Negeri Sembilan & Anor v. Manoharan Dorasamy* [2004] 1 CLJ 101; [2004] 3 MLJ 565 ("*Manoharan*'s case").

[12] Having found the three appellants liable, the High Court then made the
E following orders:

(a) that the appellants to pay the respondent RM142,858.40;

(b) interest at 8% per annum on the amount awarded from the date of judgment to the date of full satisfaction of the amount; and

F (c) general damages to be assessed by the Senior Assistant Registrar.

Findings Of The Court Of Appeal

[13] The Court of Appeal affirmed the decision of the High Court but on different grounds. The Court of Appeal held that s. 13 of the Act deals with
G change of possession or ownership of vehicles and this provision does not require the vehicle to be inspected. The Court of Appeal, despite a clear decision by this court in *Manoharan*'s case, held that ss. 10 and 12 of the Act do not apply to transfer of ownership of vehicles.

[14] Having ruled that ss. 10 and 12 of the Act do not apply to transfer of
H ownership of vehicles the Court of Appeal however went on to hold that by virtue of s. 59 of the Act there is a duty imposed on the first appellant to inspect vehicles even after their registration. The Court of Appeal then concluded that the first appellant had failed in his duty of care in carrying out his functions under the Act.

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Submissions Of The Parties

[15] Learned Senior Federal Counsel submitted that the Court of Appeal ought to have allowed the appellants' appeal against the decision of the High Court after holding that ss. 10 and 12 of the Act do not apply to a transfer of possession or ownership of vehicles as the respondent's claim was based on those two sections.

[16] It was contended that the Court of Appeal erred in holding that by virtue of s. 59 of the Act there was a duty imposed on the first appellant to conduct inspections of motor vehicles even after they have been registered and that in the instant case the 1st appellant failed in his duty of care in carrying out his function under the Act. Firstly, it was submitted that the issue of duty to inspect vehicles after registration as provided by s. 59 of the Act was never pleaded and argued by either party in the High Court and the Court of Appeal. Secondly, it was contended that s. 59 of the Act did not impose such a statutory duty on the first appellant. It merely conferred powers to the first appellant to do certain things. Since s. 59 of the Act did not impose a statutory duty on the first appellant, the first appellant did not breach any statutory duty. In support of that learned Senior Federal Counsel cited the following cases:

(a) *E v. K* [1995] 2 NZLR 239;

(b) *Groves v. Wimborne* [1989] 2 QB 402;

(c) *Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors* [2009] 1 CLJ 663; [2009] 1 MLJ 1.

[17] In response, learned counsel for the respondent submitted that the respondent's case was that the 1st appellant had breached his statutory duty as spelt out under ss. 10 and 12 of the Act when the first appellant failed to carry out physical inspection of the motor car before registering the change of ownership of the motor car. It was contended by learned counsel for the respondent that the issue relating to breach of statutory duty under ss. 10 and 12 which is also applicable to the change of ownership of the motor car has been decided in *Manoharan*'s case.

Findings Of This Court

[18] In its judgment the Court of Appeal made the following observations:

> [13] As mentioned above, the Senior Federal Counsel sought to distinguish the application of the latter decision on the ground that section 13 of the Road Transport Act does not require an inspection. We find there is some merit in the submission. There is a distinction, and in our view the High Court erred in paragraph 25 of its grounds of judgment where it held:
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> > 25. Keterangan saksi Defendan Pertama, Defendan Kedua dan Defendan Ketiga mengesahkan bahawa dalam tahun 1999 amalan dan prosedur di JPJ bagi pemindahan pendaftaran nama tuan

A punya kenderaan kepada seseorang lain ... Pendaftaran pemindahan nama tuanpunya berdasarkan sematamata kepada pemeriksaan borang-borang dalam dokumen yang perlu dikemukakan. Amalan yang diamalkan oleh pihak JPJ itu bertentangan dengan kewajipan statutori pihak JPJ yang diperuntukkan dibawah s. 10 dan s. 12 APJ yang mewajibkan untuk
B memeriksa setiap kenderaan sebelum melakukan apa-apa pendaftaran.

[14] We say so for the reason that sections 10 and 12 apply clearly to the registration of a motor vehicle, and not the section 13 registration of transfer of owner or change of possession. Hence, case law on sections
C 10 and 12 are of no assistance to this case.

[19] Consistent with a reasonably competent piece of legislation, the Road Transport Act did not omit provisions to ensure once motor vehicles have been registered, they remain fit for registration, to protect the public. Accordingly, section 59 provides authority to any road transport officer
D authorised by the Director-General in writing in that behalf to enter and inspect any motor vehicle ...

[21] We accept the caution that it is not practical to inspect each and every car on the road on regular basis or to inspect each and every registered motor vehicle being transferred. But, it was not the pleaded case that the Appellants do conduct random inspections. Hence, the car NAN 1888
E (BFN 1888) was not physically inspected "because it missed a random physical inspection", but there was no physical inspection made at all because, as submitted before us, section 13 does not require a physical inspection. Hence, clearly the Appellants failed in their duty of care in carrying out their functions under the Road Transport Act.

F **[19]** The relevant parts of ss. 10, 12 and 13 of the Act are as follows:

10(1) Every application for the registration of a motor vehicle shall be made in the prescribed form to the Director of a registration area and shall be signed by the person for the time being entitled to the possession of the motor vehicle.

G (2) ...

(3) No motor vehicle shall be registered unless –

(a) such vehicle bears a clear, distinct and untampered engine and chassis number; and

H (b) the prescribed fee has been paid:

Provided that paragraph (a) shall not apply to any electric motor vehicle which has no engine number.

(4) No motor vehicle shall be registered which does not comply with this Act as to construction, weight, equipment, use and age unless
I such motor vehicle has been exempted from such compliance under powers conferred by this Act.

(5) ...

(6) ...

12(1) The Director General or a Director may at any time before registration of a motor vehicle require the motor vehicle to be brought to any convenient place specified by him and to be inspected and, if necessary, to be weighed and measured and after registration may at any time require a motor vehicle to be brought as aforesaid if he has reason to believe –

(a) that the motor vehicle does not comply with the requirements of this Act;

(b) that any information furnished to him in respect of the motor vehicle is false, incorrect or misleading;

(c) that the motor vehicle is not in a serviceable condition; or

(d) that the weight, dimensions, character, construction, colour, identifying particulars or seating accommodation have been altered after the registration thereof.

(2) The registered owner of a motor vehicle shall forthwith inform the Director of a registration area in writing of any circumstance or event which affects the accuracy of any entry in the register relating to the motor vehicle, and shall at the same time forward or deliver to the Director the registration certificate relating to such motor vehicle.

(2A) The registered owner shall, in the case of a change of chassis of a motor vehicle, obtain the prior approval of the Director General before such change.

(3) The registered owner of a motor vehicle shall, whenever require by a Director so to do –

(a) forthwith furnish to the Director all such information as he may require for the purpose of verifying the entries relating to such motor vehicle in the register; and

(b) forthwith forward or deliver to the Director the registration certificate relating to such motor vehicle.

(4) After a motor vehicle has been inspected, weighed or measured under subsection (1), or upon receipt of any information or proof furnished in respect of a motor vehicle under subsection (2) or (3), the Director may make such amendments in the register and in the registration certificate relating to such motor vehicle as he may consider necessary, and shall return the registration certificate to the registered owner.

(5) Any person who without reasonable excuse fails to comply with any requirement of the Director General or a Director under subsection (1) or with subsection (2) or (3) shall be guilty of an offence.

Procedure on change of possession of motor vehicles

(13)(1) On any change of possession of a motor vehicle upon a voluntary transfer made by the registered owner –

(a) the registered owner shall, within seven days after such change of possession, forward to the Director of a registration area a statement in the prescribed form, and shall deliver to the new possessor or the new owner the registration certificate relating to the motor vehicle and, unless he is surrendering the licence under section 19, the licence;

(b) the new possessor or new owner shall, within seven days after such change of possession, forward to such Director a statement in the prescribed form together with the registration certificate and the prescribed fee; and

(c) the motor vehicle shall not be used for more than seven days after such change of possession unless the new possessor or the new owner is registered as the owner thereof and, if the licence has been surrendered by the registered owner, it shall not be used until the new owner or new possessor has taken out a new licence:

Provided that this subsection shall not apply in any case where the change of possession is consequent on a contract of hiring and the period of hiring does not exceed one month.

(2) …

(3) Upon the registration of a new owner of a motor vehicle, the Director shall make the necessary alterations in the register and in the registration certificate relating to such motor vehicle, and shall deliver the altered registration certificate to the new owner:

Provided that the Director may, if he considers it expedient so to do, issue *in lieu* of the altered registration certificate a new registration certificate.

[20] In *Manoharan*'s case, the transaction in question also involved a second-hand car, just like in the instant case. In that case the relevant facts are that Manoharan had agreed to purchase a Honda Accord 2.0 Ex(i) bearing registration number NAJ 1912 from one Dewarajoo a/l Gurusamy. On 25 January 1994 Manoharan took the said car to a motor workshop to have it examined. There, both he and the mechanic had, apart from examining the said car, checked both the engine and chassis numbers and found that they tallied with the details in the registration card of the said car. Only then was the purchase price agreed at RM70,000. On 27 January 1994 Manoharan paid Dewarajoo RM10,000 and a receipt was accordingly issued. Manoharan was also given the registration card.

[21] From the details in the registration card, it was clear that Dewarajoo had bought the said car from F & C Motor Sdn Bhd in Kota Kinabalu, Sabah and the previous registration number of the said car was SS9554C. Earlier to that, the registered owner was Chin Hook Kee with a post box address in Sandakan, Sabah.

[22] The said car was detained by the police on 28 April 1994 on the ground that it was a stolen property. The Chemistry Department certified that the said car's engine number had been tampered with but the original number and the original owner could not be ascertained.

[23] Subsequently, Manoharan filed an originating summons in the High Court at Seremban for a declaration that he was the beneficial owner of the said car and that the registration effected by the Road Transport Department, Seremban, the second appellant was binding since they were negligent in not making a proper check of the chassis and engine numbers. He also claimed for damages.

[24] Manoharan's originating summons was dismissed by the High Court. However, on appeal, the Court of Appeal allowed Manoharan's appeal. Leave was granted by this court to Ketua Polis Negeri Sembilan & Anor to appeal against the decision of the Court of Appeal on three questions of law. One of the questions of law was as follows:

> (3) whether ss. 8, 10, 11 and 12 of the RTA impose a duty on the second applicant as Registrar of Motor Vehicle to inspect every vehicle submitted for registration or **transfer of registration**. (emphasis added).

[25] In the appeal learned Senior Federal Counsel submitted that s. 12 of the Act imposes a discretion and not a duty on the Road Transport Department, Seremban, the second appellant to inspect vehicles and the inspection was to be done only in the circumstances set out in sub-s. (1). In his judgment Abdul Malek Ahmad FCJ answered the question of law as follows:

> [44] The third question appears to be blatantly stating what is already clear and unambiguous when one reads the provisions of ss. 8, 10, 11 and 12 of the RTA. It certainly has to be answered with a resounding 'yes'.

[26] Abdul Hamid Mohamad JCA (as he then was), who was a member of the panel, wrote a supporting judgment for the case and made the following observations:

> [65] We see from the provision of s. 10(3) that the registrar shall not register a vehicle unless such vehicle bears a clear distinct and untampered engine and chassis number. Section 12(1) empowers the registrar to require a motor vehicle to be brought to any convenient place to be inspected before the registration is effected. Of course, the law does not say that every vehicle must be inspected before registration. But, how is the registrar going to satisfy himself that the vehicle bears a clear, distinct

and untampered engine and chassis number unless he inspects it? So, reading ss. 10 and 12 together, it is clear to me that the sections impose a duty on the registrar to inspect every vehicle before registration or transfer of registration. So, my answer to the third question is in the affirmative.

[66] But how the inspection is to be done is another matter. Is it sufficient that a normal physical examination be done or must the examination be done by a chemist? We see that in this case, the tempering was only discovered through the examination conducted by the chemist. The tampering was not discovered by all the earlier physical examinations by the second appellant and the respondent's own mechanic together with the respondent.

[67] I am of the view that it is unreasonable and not practical to require every inspection of the engine and chassis numbers of every vehicle to be done by the chemist, for the purpose of registration. It involves sending every vehicle to the Chemistry Department for such examination. That clearly would delay the process of registration of motor vehicles, considering the number of vehicles being registered every day. Indeed, the public would be the first to complain about the delay. So, in my view it is unreasonable to require an examination of every vehicle to be conducted by the chemist to ascertain the engine and chassis number before registration. Normal physical examination by officers of the second appellant would suffice. After all, s. 12(1) only empowers the second appellant to inspect the vehicle. The subsection clearly means inspection by the second appellant. The court should not read more into the provision of the law.

[68] So, on the third question, I would answer it in the affirmative, even though I would not go so far as to require the second appellant to have the vehicle sent to and be examined by the chemist.

[27] It is therefore clear from the decision of this court in *Manoharan*'s case that ss. 10 and 12 of the Act impose a duty on the Director for Road Transport ('Director') to inspect every vehicle before registration or transfer of registration. In other words, the two sections are applicable to the registration of a motor vehicle under s. 10 and the registration of a new owner under s. 13, on a voluntary transfer made by the previous owner.

[28] In the instant case, the Court of Appeal held that ss. 10 and 12 of the Act were only applicable to the registration of a motor vehicle and not to the change of possession (the registration of a new owner of motor vehicle like the instant case). We have carefully considered ss. 10, 12 and 13 of the Act and the decision of this court in *Manoharan*'s case and, with respect, we agree with the decision of the Court of Appeal. The wordings of ss. 10 and 12 are very clear and unambiguous that they only deal with the registration of motor vehicles. They do not deal with the change of possession of motor vehicles. We agree with the Court of Appeal that only s. 13 apply to change of possession of a motor vehicle as what happened in the instant case.

[29] Under s. 13(1) of the Act the existing registered owner, on any change of possession of a motor, is required to forward to the Director a statement in the prescribed form within seven days after such change of possession. The new owner is also required to forward to the Director a statement in the prescribed form together with the registration certification and the prescribed fee within seven days. After they complied with the requirements the new owner is entitled to be registered as the new owner of the motor vehicle. Unlike s. 12 of the Act there is no requirement under s. 13 for the Director to inspect the motor vehicle before the registration of a new owner of the motor vehicle.

[30] As such we are of the view that the first appellant did not breach his duty under s. 13 when he registered the respondent as the new registered owner of the motor car without first inspecting the motor car. For the reasons given our answer to the first question posed is in the negative.

[31] However, that is not the only ground the respondent based his action against the appellants. As stated earlier he also claimed that the 1st appellant was negligent in *inter alia* failing to keep and maintain an accurate and reliable registration system of motor vehicles and in failing to update its registration and information system with the latest information.

[32] The learned trial judge held that the first appellant had a duty to ensure that the particulars in the registration certificate were accurate, reliable, well-kept, valid and protected.

[33] It must be noted, that would impose a heavy and burdensome duty to the first appellant as it is practically impossible to ascertain the correctness or accuracy of every information of each vehicle submitted for registration. Section 8 of the Act only provides that every Director shall keep and maintain a register of all motor vehicles registered under the Act in the registration area for which he is a Director and such register shall be in such form and contain such information, details and particulars as the Director-General may from time to time direct.

[34] It must be remembered that the evidence was adduced to show that the first appellant was informed by Tenaga Insurance Bhd (the fourth defendant) that in December 1996 the motor car was stolen. Unfortunately, the first appellant did not record that information in the register kept by the Department. The explanation given was that it was not the practice of the Department to record that information in its register. The motor car was registered in the respondent's name on 1 April 1999, which was 3 1/2 years after the first appellant was informed that the motor car was stolen.

[35] The respondent made a search with the register kept by the first appellant and it was not shown from the register that the motor car was a stolen motor car. Acting on the information available and after satisfying himself that there was no problem with the motor car the respondent decided to buy the motor car.

[36] We are of the view that the registers maintained by the Department pursuant to s. 8 of the Act must contain accurate particulars of all vehicles registered by the Department. This is because the prospective purchasers of the vehicles and those involved in the motor trade rely on such information to conduct private and commercial transactions. If the registers are not reliable they will affect those in the motor trade industry and the public who purchase second-hand vehicles. In this connection we agree with the observation made by Siti Norma Yaacob JCA (as she then was) in *Pendaftar Dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v. KS South Motor Sdn Bhd* [2000] 2 CLJ 573 at p. 585:

> … it is our opinion that the law should be that registers maintained by them must contain accurate particulars of all vehicles registered by them. This is essential for the good working of the register system as owners of motor vehicles or anybody else involved in the motor trade conduct searches on the registers on payment of a fee and "clearly a duty to take care must exist in such a case." See the case of *Ministry of Housing and Local Government v. Sharp and Another (supra).*
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> We also consider that every particular information recorded in the files of a registered vehicle is a representation that such information is accurate and reliable as the paying public particularly owners of motor vehicles, would-be-purchasers of such vehicles and those involved in the motor trade like the respondent, rely on such information to conduct private and commercial transactions. It is this concept of general reliance that imposes a duty on the first and second appellants to take care that all information coming from them are accurate. See the Privy Council case of *Invercargill City Council v. Hamlin* [1996] 2 WLR 367, and the Australian case of *Parramatta City Council v. Lutz* [1988] 12 NSWLR 293. As was said by the High Court of Australia in the case of The Council of the *Shire of Sutherland v. Heyman and Another* [1984-1985] CLR 424, reliance "has always been a important element in establishing the existence of a duty of care. It has been suggested that liability in negligence is largely, if not exclusively, based on the plaintiff's reliance on the defendant's taking care in circumstances where the defendant is aware or ought to be aware of that reliance.

[37] As regards the second question posed in the appeal it is to be noted that the High Court ordered the appellants to pay special damages of RM142,858.40 and interest of 8% per annum from the date of judgment to the date of realisation of the judgment sum and further ordered that general damages to be assessed by the Senior Assistant Registrar. The award was affirmed by the Court of Appeal.

[38] The Senior Federal Counsel however chose not to make any submission on the second question of law posed in the appeal. As such we find it unnecessary to answer the question posed.

[39] As regards the third question we are of the view that there are decisions from this court which had dealt with that issue. For example in *Pacific Forest Industries Sdn Bhd & Anor v. Lin Wen – Chih & Anor* [2009] 6 CLJ 430; [2009] 6 MLJ 293, the first question of law posed in that case is as follows:

> whether it is open to an appellate court to find or hold that a contract has been frustrated notwithstanding that such had neither been pleaded nor canvassed in the trial court and neither pleaded as a ground of appeal in the appellate court?

[40] At p. 438 of the report, this court observed:

> (17) The effect of a judge making a decision on an issue not based on the pleadings and without hearing the parties on that particular issue would be in breach of the Latin maxim *audi alteram partem*, which literally means to hear the other side, a basic principle of natural justice.
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> [18] In the instant appeal, the case was pleaded on a breach of contract and the first defendant's defence was that the plaintiffs had only ordered one shipment, three shipments short of the terms of the agreement, although the first defendant was ready and willing to supply the timber products. The reply contended otherwise. There was nothing mentioned in the pleadings which could be related to frustration.
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> [19] It is trite that in pleading frustration, particulars which give rise to frustration must be provided specifically in the pleadings (see *Bullen & Leake & Jacob's Precedents of Pleadings* (13th Ed, 1990) London, Sweet & Maxwell at p. 1102). The parties in this case had not pleaded or submitted that the contract in question had been frustrated. Thus, the defendants were highly prejudiced when the Court of Appeal decided on the issue of frustration.
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> [20] Therefore, the answer to the first question must be in the negative.

[41] In *Datuk M Kayveas v. See Hong Chen & Sons Sdn Bhd & Ors* [2013] 5 CLJ 949, one of the issues posed in the appeal is as follows:

> whether the Court of Appeal has the jurisdiction and/or power under ss. 67 and 68 of the Courts of Judicature Act 1964 to interfere with a part of the judgment of the learned judge not forming the subject of an appeal in determining the appeal before it.

[42] This court, at p. 975, answered the question as follows:

> Question 1 specifically mentioned ss. 67 and 68 of the Courts of Judicature Act 1964, provisions which give the Court of Appeal jurisdiction to hear and determine civil appeals. These provisions not only are substantive in one context but also procedural on the other, depending upon the context they are being used. Be that as it may when interpreting them the outcome should not result in unfairness or produce manifest injustice in particular relating to procedure (*Sim Seoh Beng @ Sim*

A *Sai Beng & Anor v. Koperasi Tunas Muda Sungai Ara Berhad* [1995] 1 CLJ 491). In the instant case no jurisdictional error was committed by the learned judge, which could justify the Court of Appeal to interfere or act to straighten things out.

Further, in the course of the unnecessary interference of a part of the
B judgment that did not form part of the appeal, and due to a misreading of the grounds of judgment, the Court of Appeal had instead caused injustice to the appellant. In the circumstances of the case, the answer to the first question is in the negative. This ground by itself is sufficient for us to allow the appeal. Thus, there is no necessity to answer questions 2 and 3.

C **[43]** Based on the authorities cited above our answer to the third question posed is therefore in the negative.

[44] With such an answer given to the third question posed we find it unnecessary to answer the fourth question.

D **[45]** Even though we answered the first and third question in favour of the appellants, we find that the decision of the courts below to allow the respondent's claim is justified based on the case pleaded and the evidence adduced by the respondent. The appeal is therefore dismissed with costs.

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